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*By ECFS*

October 9, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Petition for Declaratory Ruling of American Electric Power Service Corporation et al.  
Regarding the Rate for Cable System Pole Attachments used to Provide Voice over  
Internet Protocol Service, WC Docket No. 09-154*

*Implementation of Section 224 of the Act; Amendment of the Commission's Rules and  
Policies Governing Pole Attachments, WC Docket No. 07-245*

Dear Secretary Dortch:

The Massachusetts Department of Telecommunication and Cable ("MDTC")<sup>1</sup> respectfully submits this letter as reply comments pursuant to the Public Notice issued by the Federal Communications Commission ("FCC") on August 25, 2009, in the above-captioned docket, and in response to certain comments filed. In particular, the MDTC supports those comments endorsing a unified rate for pole attachments, as it would help to further broadband deployment, and modernize the regulation of pole attachments to better reflect the current realities of the communications industry.<sup>2</sup> Moreover, the MDTC agrees with the suggestion advanced by other commenters that the FCC already has a pending proceeding for broadband

<sup>1</sup> The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. Mass. Gen. Laws c. 25C § 1.

<sup>2</sup> *Comments of AT&T, Inc.*, WC Docket No. 09-154, Sept. 24, 2009 ("AT&T Comments"); *Comments of Verizon*, WC Docket No. 09-154, WC Docket No. 07-245, RM -11293, RM -11303, Sept. 24, 2009 ("Verizon Comments").

pole attachments<sup>3</sup> in which it tentatively concluded that a unified rate for attachments may be appropriate.<sup>4</sup> Therefore, this issue is better dealt with in that proceeding.<sup>5</sup>

As one of the states that regulates pole attachments, Massachusetts (and the MDTC) will not be bound by the outcome of this decision.<sup>6</sup> However, the instant proceeding involves issues of great importance to the MDTC, namely: the continued support of broadband deployment; the development of a clear regulatory framework for all broadband-based telephony; and regulatory parity.<sup>7</sup>

Under the current federal rate structure, pole attachment rates differ depending on what type of company is seeking the attachment: cable companies seeking to attach pay a lower cable rate, while competitive local exchange carriers ("CLECs") pay a higher telecommunications rate.<sup>8</sup> Previously, this rate bifurcation was not problematic because it recognized that different types of companies offered different, discrete services which were offered in separate markets.<sup>9</sup> For example, cable companies only offered video service, and telephone carriers only offered traditional voice service. However, as technology has advanced, the distinctions between these markets have blurred, creating a convergence of previously distinct services.<sup>10</sup> In many instances, incumbent local exchange carriers ("ILECs"), CLECs, and cable operators now compete directly against one another in the same market or markets by offering the same types of

<sup>3</sup> *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments: Notice of Proposed Rulemaking*, WC Docket No. 07-245, RM -11293, RM -11303, FCC 07-187 (2007) ("Pole Attachment NPRM").

<sup>4</sup> *Id.* at ¶ 36.

<sup>5</sup> *Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 09-154, at 2 (September 24, 2009); *Comments of the National Cable & Telecommunications Association*, WC Docket No. 09-154, GN Docket No. 09-51, WC Docket No. 07-245, WC Docket No. 04-36 at 6 (Sept. 24, 2009) ("NCTA Comments"); *Comments of AT&T* at 4 (stating that adoption of its proposal for a unified broadband attachment rate in WC Docket. 07-245 would resolve the present issues negating the need for action on the electric utilities petition); *Comments of Verizon* at 1; *Comments of Comcast Corporation*, WC Docket No. 09-154, GN Docket No. 09-51 at 3 (September 24, 2009) ("Comcast Comments").

<sup>6</sup> *Corrected List of States that have Certified that they Regulate Pole Attachments*, WC Docket No. 07-245, March 21, 2008.

<sup>7</sup> *See, e.g., Joint Comments of the Massachusetts Broadband Institute & the Massachusetts Department of Telecommunications & Cable*, GN Docket No. 09-51, at 16-19 (June 8, 2009); *Reply Comments of the Massachusetts Department of Telecommunications & Cable*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36, at 8-10 (December 22, 2008).

<sup>8</sup> 47 U.S.C. §§ 224 (d) and (e); 47 C.F.R. §§ 1.1409 (e)(1) &(2). *See generally* Pole Attachment NPRM; NCTA Comments at 3-4; AT&T Comments at 1; Verizon Comments at 2-3.

<sup>9</sup> *See* Pole Attachment NPRM at para. 14, citing *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992; Report and Order and Further Notice of Proposed Rulemaking*, MB Docket No. 05-311, 22 FCC Rcd 5101, 5103, para. 2 (2007) ("Section 621(a)(1) Report and Order").

<sup>10</sup> *See Joint Comments of the Massachusetts Department of Telecommunications & Cable & the Maine Public Utilities Commission*, WC Docket No. 07-38 at 2 (June 15, 2007).

services, including telephone, video, and/or internet services.<sup>11</sup> Often, especially in the residential market, these services are bundled as a package.<sup>12</sup>

As an example, in Massachusetts, fixed voice over internet protocol (“VoIP”) telephone service is offered as part of a bundled service by several traditional cable operators licensed in 288 of Massachusetts’ 351 communities.<sup>13</sup> This represents availability of the service to nearly 97% of the state’s population.<sup>14</sup> In addition, the state’s ubiquitous ILEC, Verizon, is now a licensed video provider in 101 of these communities, and is beginning to offer fixed VoIP as a part of its bundled services to new customers of its FiOS product.<sup>15</sup> To end users, fixed VoIP service is indistinguishable from traditional telephone service, and cable operators compete directly with both ILECs and CLECs by providing this service in Massachusetts.<sup>16</sup>

However, despite the fact these providers are now in direct competition with one another, cable companies, because of their lower attachment rate, have an advantage over telephone attachers offering the same service. By virtue of their cable system roots, cable companies are able to offer telephony (i.e., VoIP or circuit switched) service but currently are not required to pay the telephone attachment rate. This has led to a regulatory inequity and may give a competitive advantage to the cable companies. The MDTC agrees with comments that one efficient and equitable solution to this problem would be to adopt a unified pole attachment rate for like services provided by all or most types of providers.<sup>17</sup> This recommended solution would help to “level the playing field” for providers and create greater regulatory certainty by having a single rate for like services regardless of the legacy (cable or telephone) of the company providing them.

Under the current scheme, traditional cable providers are paying a cable-only rate for attachments that are used to provide not only video, but telephone and internet services as well. In contrast, CLECs must pay a higher telephone-only rate, even though their attachments also are used to provide video and internet services.<sup>18</sup> Since there is no mechanism by which to fairly and accurately apportion the relative amounts of voice, video, or internet (data) traffic traveling through the cables, conduits or wires that use the pole attachments, one appropriate method is to use a single rate for cable, telephone, and internet service providers, except in those

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<sup>11</sup> Section 621(a)(1) Report and Order at para. 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Comments of the Mass. Dept. of Telecom. & Cable*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36, at 11 (Dec. 22, 2008) (“MDTC Dec. 2008 Comments”).

<sup>14</sup> *Id.*

<sup>15</sup> See Verizon, “Verizon FiOS TV: Massachusetts Communities Open for Sales,” [http://www.22.verizon.com/about/community/ma/files/matvtowns\\_sep09.pdf](http://www.22.verizon.com/about/community/ma/files/matvtowns_sep09.pdf) (last viewed Oct. 9, 2009).

<sup>16</sup> See MDTC Dec. 2008 Comments at 8; *IP-Enabled Services*, Report and Order, WC Docket No. 04-36 at ¶ 2 (2009).

<sup>17</sup> Verizon Comments at 1; AT&T Comments at 4-5.

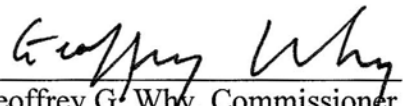
<sup>18</sup> AT&T Comments at 2; Verizon Comments at 2-3.

circumstances where a provider is only offering a single service and should qualify for the existing rate for that service.

Moreover, the MDTC agrees with comments asserting that a unified rate would help to promote broadband deployment by providing new entrants the protection of a fixed rate for pole attachments.<sup>19</sup> Because the current rate caps only apply to cable companies and CLECs, any prospective broadband provider who is not in one of those categories must negotiate attachment rates, a situation that inevitably leads to a higher attachment rates because of the imbalance in negotiating positions between the attachers and the pole owners, who control a monopoly bottleneck facility. By providing a unified rate to all attachers of similar services, providers who are not CLECs or cable systems, would be able to compete on a more equal footing, thereby further promoting broadband deployment.

In sum, the MDTC believes that the issues raised by this petition are best addressed in the FCC's open pole attachment proceeding and encourages the FCC to adopt its proposed tentative conclusion in favor of a unified rate for pole attachments,<sup>20</sup> because it is a more efficient and equitable way to regulate attachment rates.<sup>21</sup> Furthermore, a unified rate would help to promote broadband deployment by giving all competitors the opportunity to attach at the same rate.

Sincerely,

  
Geoffrey G. Why, Commissioner  
Massachusetts Dept. of  
Telecommunications and Cable

<sup>19</sup> Verizon Comments at 2; NCTA Comments at 14; AT&T Comments at 3-4.

<sup>20</sup> Pole Attachment NPRM at ¶ 36.

<sup>21</sup> The MDTC's lack of discussion with regard to the details of any unified rate plans proposed by commenters in the Pole Attachment NPRM should not be construed as support for a particular position. The MDTC supports the general concept of a unified rate but refrains from comment on the details of such a methodology. The MDTC's support for the general concept of a unified rate is based on the comments in this proceeding and does not preclude the Department from adopting a different methodology, based on a different record, in a pole attachment rate complaint case brought before the Department in the future.